



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

*610 Federal Plaza
Central Islip, New York 11722*

November 29, 2022

By ECF

Honorable Alan Trust
United States Bankruptcy Court
Eastern District of New York
Alfonse M. D'Amato Federal Courthouse
290 Federal Plaza, Courtroom 960
Central Islip, New York 11722

Re: *Equal Employment Opportunity Commission v. Absolut Facilities
Management LLC, et al.*, Adversary Proceeding No. 20-8055-ast

Dear Judge Trust:

This Office represents Plaintiff Equal Opportunity Employment Commission ("EEOC") in the above Adversary Proceeding. On November 21, 2022, following a hearing on November 8, 2022, this Court ordered that "defendants are compelled to produce the documents requested in plaintiff's June 17, 2022 discovery demands by November 28, 2022." EEOC respectfully submits this letter to advise the Court that Defendants have failed to comply with the Court's November 21, 2022 Order and to suggest that an appropriate remedy for Defendants' violation of the Order may be an order granting default judgment in favor of the EEOC. *See* Fed. R. Civ. P. 37(b)(2)(A)(vi). As of the time of the filing of this letter, Defendants have not produced *a single* document, nor responded to the undersigned's good faith attempt to discuss the matter with Defendants' counsel this morning and allowance until noon today to produce documents. Additionally, third party Avante Care Management, LLC has also failed to produce complete responses to the government subpoena served on July 15, 2022.¹

EEOC has been seeking limited discovery on issues germane to its anticipated cross-motion for summary judgment since June 2022, which motion is currently due in just two weeks, on December 15, 2022. In furtherance of EEOC's efforts to obtain documents without the need for litigation, EEOC in good faith served third party subpoenas on Defendants' agents in July 2022 following Defendants continued refusal to comply with EEOC's June 2022 discovery demands on the grounds that they are not "in possession" of the requested documents. This Court rejected that argument during the November 8, 2022 hearing. Defendants' violation of the Court's November 21, 2022 Order and continued obstruction is preventing EEOC from bringing

¹ Avante Care Management, LLC has only partially complied with the government subpoena. Despite its representations, through other counsel, that it would search for documents based on the undersigned's list of search terms, which the undersigned provided on November 8, 2022, Avante Care Management, LLC has failed to have any further communication with the undersigned despite the undersigned's multiple attempts to follow up.

its cross-motion for summary judgment and prosecuting the adversary proceeding that it filed in March 2020.

Accordingly, EEOC respectfully suggests that an appropriate remedy for Defendants' violation may be an order granting default judgment in favor of EEOC releasing the \$425,000 Settlement Funds pursuant to the Consent Decree, or, at a minimum, "directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims" and "prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence", or any other such relief that the Court deems appropriate. *See* Fed. R. Civ. P. 37(b)(2)(A)(i), (ii), (vi).

Furthermore, should the Court not order the suggested relief, EEOC is compelled to ask for another extension of its time to file its cross-motion for summary judgment pending any appropriate action with respect to Defendants' violation of the Order, and/or until such time as EEOC receives and reviews the documents Defendants were ordered to produce.

Respectfully submitted,

BREON PEACE
United States Attorney

By: /s/ Megan J. Freismuth
Megan J. Freismuth
Assistant U.S. Attorney
631-715-7905
Megan.freismuth@usdoj.gov

cc: All Counsel of Record

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Letter was served on this 29th day of November 2022 via the USBC-EDNY's CM/ECF system on those parties registered to receive notice in this case.

s/ MEGAN J. FREISMUTH

MEGAN J. FREISMUTH

Assistant United States Attorney